

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF OKLAHOMA**

THE CHEROKEE NATION,

Plaintiff,

VS.

MCKESSON CORPORATION;
CARDINAL HEALTH, INC.;
CARDINAL HEALTH 110, LLC;
AMERISOURCEBERGEN DRUG CORP.; CVS
HEALTH CORPORATION; CVS PHARMACY,
INC.; OKLAHOMA CVS PHARMACY, LLC;
WALGREENS BOOTS ALLIANCE, INC.;
WALGREEN CO.; WAL-MART STORES, INC.

Case No. 18-cv-CV-00056-RAW

Defendants.

**DEFENDANTS' RESPONSE TO PLAINTIFF'S
NOTICE OF SUPPLEMENTAL AUTHORITY**

The Local Rules of this Court do not provide for the unilateral supplementation of a Joint Status report. Defendants respectfully submit that Plaintiff’s Notice of Supplemental Authority (“Notice”) (ECF No. 126) should therefore be stricken, or alternatively that they should be permitted to submit this brief response.

The Notice submits a scheduling order entered earlier this week by the U.S. District Court for the Northern District of California (“Scheduling Order”), where that court directed that motions to dismiss should be limited to issues “not previously resolved in the MDL.” That Scheduling Order was issued without full briefing from the defendants on whether the law-of-the-case doctrine applies to cases remanded from the MDL. (The defendants in that case will be filing a motion for reconsideration.) Regardless of whatever arguments may be appropriate under Ninth Circuit precedent, the law in the Tenth Circuit is clear. As Defendants address in the Joint Status Report (ECF No. 120, at 10-11) submitted to this Court earlier this week, the law-of-the-case doctrine

cannot properly apply to rulings by a different court in a different case. There is no exception to that principle for cases remanded from an MDL. Plaintiff in fact concedes (ECF No. 120, at 9) that the MDL rulings are not “binding,” although it proposes a hybrid one-off procedure for “reconsideration” of prior MDL rulings based on a showing of “special circumstances.”

Defendants continue to believe that the Joint Status Report, submitted in response to the Court’s request for a “narrative form more fully explaining the nature of this case and its journey to and from this court and back again” (ECF No. 88, at 2), is not the proper mechanism for Plaintiff to seek limitations on the scope of legal issues to be resolved on motions to dismiss. Defendants submit that there should be a separate round of briefing on the law-of-the case doctrine, and why Plaintiff’s proposed hybrid procedure is contrary to settled limitations on that doctrine, if the Court is inclined to consider Plaintiff’s proposal to limit the scope of motions to dismiss based on prior rulings by a different court in a different case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the following parties are being served with a copy of this document on this April 3, 2020, in accordance with the Federal Rules via CM/ECF or as otherwise indicated below:

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